



# MAYOR AND COUNCIL AGENDA

NO. 18 DEPT.: Legal/ Community Planning and Development Services DATE: Oct. 12, 2004

Contact: Deane Mellander, Planner III

**ACTION:** Introduction and adoption of ordinance to grant zoning text amendment TXT2004-00214: to amend the Zoning Ordinance to delete the requirement for a finding of need in the consideration of a special exception for an automobile filling station, drive-in restaurant, or mechanical car wash; Mayor and Council, applicants.

## ACTION STATUS:

**FOR THE MEETING OF:** 11/1/04

INTRODUCED

PUB. HEARING 9/13/04

INSTRUCTIONS 10/4/04

APPROVED

EFFECTIVE

## ROCKVILLE CITY CODE,

CHAPTER 25

SECTION 353

☐ CONSENT AGENDA

**RECOMMENDATION:** Staff recommends that this ordinance be introduced and adopted at the meeting of November 1, 2004. If the Mayor and Council wish to introduce the ordinance and proceed to adoption at the same meeting, the ordinance should first be introduced, then a motion should be made to waive the layover period. If the motion to waive the layover period is approved by an affirmative vote of four members of the Mayor and Council, then they may proceed to move to adopt the ordinance.

**IMPACT:** ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

Will delete the finding of neighborhood need in consideration for a special exception for an automobile filling station, as well as for a drive-in restaurant and a mechanical car wash.

**BACKGROUND:** The concept of making a finding of need for certain uses dates back several decades, and was likely developed in response to an era when facilities such as gas stations seemed to pop up on every commercial corner. The current language in the code dates at least from 1956. The entire auto service business has completely changed in those near-50 years. The gain in sophistication of market studies and changes in the gas station industry are such that simple market forces appear to adequately control the distribution of these uses. This same section of the code also requires a need finding for drive-in restaurants and mechanical car washes. The text amendment leaves in place the required finding that there won't be a saturation of these uses in the same neighborhood, which is probably the more important factor in reviewing these applications.

The Planning Commission reviewed this text amendment at its meeting on September 8, 2004 and recommended approval as drafted. The Planning Commission wanted to be sure that removal of this section would still allow the Board of Appeals to deny an application that would result in an overconcentration of a special exception use in the neighborhood. Staff responded that Section 25-353(b)(2) requires the Board to find "that the use at the location proposed will not result in a

multiplicity or saturation of similar uses in the same general neighborhood of the proposed use." The Planning Commission also asked if there could be a standard for an overconcentration of a use. Staff indicated that it varies by use and by location. For instance, four gas stations in close proximity along Rockville Pike can be less of a concern than 2 or 3 gas stations at the entrance to a neighborhood.

Members of the Board of Appeals were asked to provide their comments for the record. Their comments were provided at the Discussion and Instruction session.

At the public hearing on September 13, 2004 there were two speakers. Dr. Lih Young asked that the City not concern itself with small matters while ignoring larger issues. William Meyer supported the text amendment. He questioned whether or not the code should be changed to require renewal of the special exception if there was a change in the "branding" of gas stations. The City's Assistant City Attorney noted that special exceptions run with the land, rather than with the owner. If a new owner fully complies with the original conditions of approval, no new special exception is required.

At the close of the hearing, the Mayor and Council indicated that the record of the hearing would close at 5:00 p.m. Monday, September 27. No additional testimony was received. The Mayor and Council, at the Discussion and Instruction session, directed the staff to prepare an ordinance for adoption. Staff recommends that the ordinance be introduced, the layover period waived, and proceed to adopt the ordinance.

**PREPARED BY:**

Deane S. Mellander  
Deane Mellander, Planner III

10/21/04  
Date

**APPROVE:** [Signature]  
Robert J. Spalding, AICP, Chief of Planning

10-21-4  
Date

**APPROVE:** [Signature]  
Arthur D. Chambers, AICP, CPDS Director

10/22/04  
Date

**APPROVE:** [Signature]  
Catherine Tuck Parrish, Acting City Manager

10/26/04  
Date

**LIST OF ATTACHMENTS:**

1. Proposed ordinance.
2. Planning Commission recommendation.
3. Staff report to the Planning Commission.
4. Board of Appeals recommendation.

Ordinance No. \_\_\_\_\_ ORDINANCE: To grant Text Amendment Application No. TXT2004-00214, Mayor and Council of Rockville, Applicant

WHEREAS, Zoning Text Amendment Application No. TXT2004-00214 was filed on July 27, 2004, by the Mayor and Council of Rockville, 111 Maryland Avenue, Rockville, Maryland 20850, for the purpose of deleting the requirement for a finding of need in the consideration of a special exception for an automobile filling station, drive-in restaurant, or mechanical car wash; and

WHEREAS, the Planning Commission reviewed the proposed text amendment at its meeting of September 8, 2004, and recommended approval of the application as set forth in a memorandum to the Mayor and Council dated September 9, 2004; and

WHEREAS, pursuant to Article 66B of the Annotated Code of Maryland, the Mayor and Council of Rockville gave notice that a hearing on said application would be held by the Mayor and Council in the Council Chambers at Rockville City Hall on September 13, 2004, at 7:00 p.m. or as soon thereafter as it may be heard; and

WHEREAS, on September 13, 2004, said application came on for hearing at the time and place provided for in said advertisement; and

WHEREAS, the Mayor and Council having considered the text amendment application, the said Mayor and Council having decided that the granting of this application, as amended, in the form set forth below would promote the health, safety and welfare of the citizens of the City of Rockville.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, that Text Amendment Application No. TXT2004-00214 be, and the same is hereby, granted, in the form set forth below.

That Chapter 25 of the Rockville City Code entitled “Zoning and Planning” be amended by amending Section 25-353 to read as follows:

Section 25-353.       Automobile filling station, class I; automobile filling station, class II; restaurant with drive-through or drive-through only and mechanical carwash.

- (a) \* \* \*
- (b) Additional finding[s] required. The additional finding[s] required [are] is as follows:

[(1) That for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City; and]

[(2)] That the use at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood of the proposed use.

- (c) \* \* \*
- (d) \* \* \*
- (e) \* \* \*

Note: [Brackets] indicate material deleted  
Asterisks \* \* \* indicate material unchanged by this ordinance

\*\*\*\*\*

I hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the Mayor and Council at its meeting of

\_\_\_\_\_  
Claire F. Funkhouser, CMC, City Clerk



City of Rockville

## MEMORANDUM

September 17, 2004

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Recommendation on Text Amendment Application TXT2004-00214, to delete the requirement for a finding of need for an automobile filling station, drive-in restaurant or mechanical car wash as a special exception; Mayor and Council, Applicant

At its meeting of September 8, 2004 the Planning Commission reviewed the above referenced text amendment that was filed by the Mayor and Council. The proposed text amendment would delete the requirement for a finding of need for an automobile filling station, drive-in restaurant or mechanical car wash as a special exception.

The Planning Staff Report recommended approval of the text amendment as introduced.

The Planning Commission received comments from the staff. There were no other comments received.

The Planning Commission wanted to be sure that removal of this section would still allow the Board of Appeals to deny an application that would result in an overconcentration of a special exception use in the neighborhood. Staff responded that Section 25-353(b)(2) requires the Board to find "that the use at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood of the proposed use." The Planning Commission also asked if there could be a standard for an overconcentration of a use. Staff indicated that it varies by use and by location. For instance, four gas stations in close proximity along Rockville Pike can be less of a concern than 2 or 3 gas stations at the entrance to a neighborhood.

Following discussion with the staff and deliberation, the Planning Commission is in agreement with the intent of the text amendment and the planning staff. Therefore the Planning

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Commission, on motion of Commissioner Mullican, seconded by Commissioner Holtz, recommends approval of the proposed text amendment on a vote of 7 to 0.

cc: TXT2004-00213 file  
Planning Commission



City of Rockville

## MEMORANDUM

August 24, 2004

TO: City of Rockville Planning Commission

FROM: Deane Mellander, Planner III *DM*

VIA: Bob Spalding, AICP, Chief of Planning

SUBJECT: Proposed Zoning Text Amendment TXT2004-00214; To delete the requirement for a finding of need for an automobile filling station, drive-in restaurant or mechanical car wash as a special exception.

### BACKGROUND

The Mayor and Council directed the staff to prepare a zoning text amendment for the purpose of deleting the requirement for the finding of need for an automobile filling station as part of the consideration of a special exception. The public hearing on this text amendment will be held on September 13, 2004.

### ANALYSIS

Section 25-353 of the zoning ordinance establishes the special requirements for granting special exceptions for automobile filling stations. This section also applies to drive-through restaurants and mechanical car washes.

Subsection (b) of this section reads as follows:

- (b) *Additional findings required.* The additional findings required are as follows:
- (1) That for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City; and
  - (2) That the use at the location proposed will not result in a multiplicity of saturation of similar uses in the same general neighborhood of the proposed use.

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August 24, 2004

The proposed text amendment would delete subsection (1) of the text, with appropriate modifications to the remaining language for clarity. The concept of making a finding of need for certain uses dates back several decades, and was likely developed in response to an era when facilities such as gas stations seemed to pop up on every commercial corner. The current language in the code dates at least from 1956. The entire auto service business has completely changed in those near-50 years. The gain in sophistication of market studies and changes in the gas station industry are such that simple market forces appear to adequately control the distribution of these uses. The finding of "need" in this context has always been more subjective than empirical. It should be noted that other jurisdictions have also removed similar provisions in recent years. The proposed amendment will also delete the need finding for drive-in restaurants and mechanical car washes, which are covered under the same section of the Code. The text amendment leaves in place the required finding that there won't be a saturation of these uses in the same neighborhood, which is probably the more important factor in reviewing these applications. This provision should adequately cover drive-in restaurants and mechanical car washes as well as filling stations.

#### RECOMMENDATION

The staff finds that the proposed text amendment will delete language that is archaic and unnecessary. Staff therefore recommends approval of proposed text amendment TXT2004-00214 as submitted.

/dem

Attachments: A. Proposed Text Amendment  
B. Text Amendment Application





City of Rockville

## MEMORANDUM

September 24, 2004

TO: Mayor and City Council

FROM: City of Rockville Board of Appeals

SUBJECT: Text Amendment Application TXT2004-00214

The Board of Appeals supports the referenced Zoning Text Amendment, which proposes to delete Section 25-353 (b)(1) from the City Rockville Zoning Ordinance, which reads as follows: "That for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City."

The Board of Appeals fully supports the deletion of this provision, since this amendment was one of several, the Board has recommended to the Mayor and Council, as a formal amendment to the Zoning Ordinance.

The Board of Appeals unanimous support of this text amendment is affirmed by signature of its Chairman for the 2004 calendar year.

Respectfully,

A handwritten signature in cursive script that reads "Roy Deitchman".

Roy Deitchman  
Chair, Board of Appeals

/cdc

cc: Cas Chasten, Planner III  
Margaret Hall, Planner II  
Bob Spalding, Chief of Planning  
Board of Appeals members

APPLICATION TO THE CITY OF ROCKVILLE  
FOR A TEXT AMENDMENT  
TO THE ZONING AND PLANNING ORDINANCE

THIS APPLICATION MUST BE TYPEWRITTEN OR PRINTED AND NOTARIZED AND SUBMITTED IN  
DUPLICATE TO THE CITY CLERK FOR FILING. ALL ITEMS MUST BE COMPLETED AND THE  
FILING FEE MUST ACCOMPANY THIS APPLICATION.

	<u>DO NOT WRITE IN THIS SPACE</u>
<u>Mayor and Council of Rockville</u>	Application No. <u>TXT2004-00214</u>
Name of Applicant	Filing Date <u>7/27/04</u>
<u>111 Maryland Avenue</u>	Filing Fee <u>N/A</u>
Address	Public Hearing Date <u>9/13/04</u>
<u>Rockville, MD 20850</u>	Decision/Date _____
Telephone Number	
<u>240-314-8200</u>	

APPLICATION IS HEREBY MADE WITH THE ROCKVILLE MAYOR AND COUNCIL FOR APPROVAL OF  
A CHANGE IN THE TEXT OF THE ZONING AND PLANNING ORDINANCE OF ROCKVILLE, MARYLAND.

Page 2033 Article VIII Section 25-353

FROM: Which reads as follows:

See attached

TO: Read as follows:

See attached

By: \_\_\_\_\_  
Signature of Applicant

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

My Commission Expires: \_\_\_\_\_ Notary Public

August 23, 2004

**Proposed Text Amendment TXT2004-00214: To delete the requirement for a finding of need for automobile filling stations.**

Amend Article VIII, Division 2, as follows:

**Sec. 25-353. Automobile filling station, class I; automobile filling station, class II; restaurant with drive-through and mechanical carwash.**

- (a) *Scope.* Except as otherwise provided in this section, the provisions of this section apply to automobile filling stations, class I; automobile filling stations, class II; restaurants with drive-through; and mechanical carwashes.
- (b) *Additional finding[s] required.* The additional finding[s] required [are] is as follows:
  - (1) [That for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City; and]
  - [(2)] That the use at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood of the proposed use.

\* \* \*

Note: [Brackets] indicate material deleted  
Underlining indicates material added  
[[Double brackets]] indicate material deleted after introduction  
Double underlining indicates material added after introduction